

REMARKS

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. §1.112, are respectfully requested in light of the following remarks.

Claims 1-23 are now in this application. Minor corrections to the claims have been made by the foregoing amendment. In addition, new Claim 23, drawn to the first compound depicted in original Claim 4, has been added. No new matter has been added.

On April 22, 2004, applicants filed a claim for foreign priority and a certified copy of the priority document. Acknowledgment of the claim for priority under 35 U.S.C. §119 and of the certified copy would be appreciated.

The Examiner has required restriction to one of the following: Group I, Claims 1-4, drawn to a triazine of formula (I); Group II, Claims 5-18, drawn to cosmetic and dermatological compositions comprising these compounds; and Group III, Claim 8, drawn to a synthetic polymer of glass containing the compound of formula (I). It is noted that new Claim 23, drawn to a specific triazine compound, falls within Group I.

Applicant hereby elects, with traverse, Group I, Claims 1-4 and 23, drawn to triazine compounds of formula (I).

The restriction requirement is traversed for a number of reasons.

As regards elected Group I and non-elected Group II, these groups are related as compound and combination/composition containing the compound, that is, they are related as an element of a combination and the combination. Restriction cannot be required because the Group I element is essential to the Group II combination as claimed. See M.P.E.P. 806.05(c) as revised May 2004. Moreover,

while some of the compositions of Group II are more complex than others, all of these compositions are photoprotecting; further, the composition claims in Group II depend from and include all of the limitations of Claim 1 of elected Group I. Therefore, there would be no undue burden on the Examiner to examine Group II together with elected Group I, most especially where the compositions are defined most simply (Claims 5-8 and 16-18). As to the compositions claims which contain further active ingredients, it is submitted that if the compounds themselves are new and unobvious, the compositions containing them are of necessity also new and unobvious. The Examiner has indicated that the Group I and II inventions are related as product and process of using the product as cosmetic/dermatological composition. This is not correct because, as pointed out above, Claims 4-18 are composition claims, not method of use claims.

Claims 19-21 are drawn to the method of use which the Examiner assigns to Group II; however, Claims 19-21 have not been included by the Examiner in any of the groups set forth in the restriction requirement. The Examiner has indicated that the inventions of product and process of use are distinct because the process for using the compound of Claim 1 can be practiced with another materially different product and *vice versa*. However, the process for using the product as claimed cannot be practiced with a materially different product because the process as claimed must use compositions which must contain the product as claimed in Claim 1. Thus, the process of Claims 19-21 must contain all of the limitations of elected Group I and there would be no undue burden on the Examiner to examine Claims 19-21 together with elected Group I. Again, if the compound of Claim 1 is new and unobvious, a method of using it is necessarily also new and unobviousness.

Group III, purportedly containing Claim 8, is drawn to a synthetic polymer or glass containing the compound of Group I/Claim 1. The subject matter of Group III is not in Claim 8 but rather in Claim 22. The Examiner believes Groups I and III are independent and distinct. This is not correct. Inventions I and III are related as combination (the synthetic polymer or glass of Claim 22) and element of a combination (the compound of Claim 1). When, as here, the separately claimed element constitutes the essential distinguishing feature of the combination as claimed, the inventions are not distinct and restriction must not be made. See M.P.E.P., 806.05(c) as revised May 2004.

In view of the foregoing, it is believed that the restriction requirement should be withdrawn and that all claims should be examined on their merits herein. At the very least, rejoinder should be permitted when an elected Group I product claim is found allowable, consistent with the Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Bouwer* and 35 U.S.C. §103(b) published at 1184OG86 on March 26, 1996. It is believed that the rejoinder of at least Group II, Claims 5-18, and of Claims 19-21 (for which not group has been indicated) with elected Group I would be appropriate in view of the published guidelines. Moreover,

the rejoinder of Group III with elected Group I is required by M.P.E.P. 805(c) as revised May 2004.

Respectfully submitted,

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